

REMARKS

In view of the Examiner's acknowledgement of allowable subject matter in claim 23, the Applicants have amended claim 23 to place it in independent form.

The Examiner has rejected claims 1, and 5-7 under 35 USC 102(b) as being anticipated by U.S. 5,865,764 to Moorhead. In this rejection, the Examiner states that Moorhead discloses in Figure 1 an apparatus for determining and providing automatic control of fluid pressure within a body cavity during irrigation procedures used in surgery involving operations within invetrious cavity of an eye.

The Examiner states that the apparatus, as disclosed, is capable of performing the method for controlling fluid flow to and from eye during ophthalmic surgery including steps to infuse the irrigation fluid to the eye, to determine the initial irrigation fluid to the pressure, to adjust the irrigation fluid flow based on the determined initial irrigation fluid pressure, to continuously determine irrigation fluid pressure after initial determination, and to continually adjust irrigation fluid flow based on the continuously determination of irrigation fluid pressure.

The Applicants submit that anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of the claimed invention. RCA Corp. v. Applied Digital Data Systems, Inc. 221 USPQ 385 (Fed. Cir. 1984); In re Sun 31 USPQ 2d 1451

(CAFC 1993); Advanced Display Systems, Inc. v. Kent State University 540 USPQ 2d 1673 (CAFC 2000).

In addition, the Examiner must identify wherein each and every facet of the claimed invention is disclosed in the applied reference. Ex Parte Levy 17 USPQ 2d 1461 (USPTO Board of Patent Appeals and Interferences 1990).

The Applicants further submit that anticipation must meet strict standards and unless all of the same elements are found in exactly the same situation and united in the same way to form identical function in a single prior art reference, there is no anticipation. Tights, Inc. v. Acme-McCary Corporation, et al. 191 USPQ 305 (CAFC 1976).

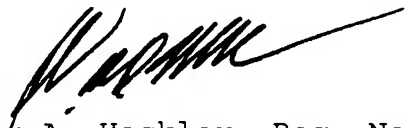
With this criteria in mind, it is clear that there is no teaching in the Moorhead reference of continuously adjusting aspiration fluid flow based upon the continuous determination of irrigation fluid pressure.

In view of this lack of teaching the Applicants submit that a rejection of claims 1, and 5-7 is not sustainable under 35 USC 102(b) on the basis of the Moorhead reference. Accordingly, the Applicants respectfully request the Examiner to withdraw this rejection.

In view of the arguments hereinabove set forth and amendment to the claims, it is submitted that each of the claims now in the application define patentable subject matter not anticipated by the art of record and not obvious to one skilled in this field who is aware of the references of record. Reconsideration and allowance are respectfully requested.

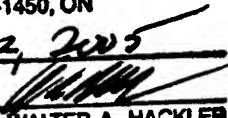
Also enclosed is an IDS under 37 CFR 1.97(c) listing references which the Applicants have become aware.

Respectfully submitted,



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